

FCC MAIL SECTION

Jul 17 Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of DISTRICT OF COLUMBIA

MM Docket No. 92-291

Amendment of Section 73.202(b), RM-8133
Table of Allotments,
FM Broadcast Stations.
(Cambridge and
St. Michaels, Maryland)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: July 17, 1995; Released: July 25, 1995

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a *Petition for Reconsideration*, filed by CWA Broadcasting, Inc. ("CWA") of the *Report and Order* ("R&O"), 9 FCC Rcd 2767 (1994), in the above-captioned docket.¹ CWA requests reconsideration of our action denying its request to reallocate Channel 232A from Cambridge, Maryland, to St. Michaels, Maryland.² Prettyman Broadcasting Company, Inc. ("Prettyman")³ filed an opposition to the petition for reconsideration to which CWA filed a reply.

2. At the request of CWA, the *Notice of Proposed Rule Making*, 7 FCC Rcd 8545 (1992), in this proceeding proposed to reallocate Channel 232A from Cambridge, Maryland, to St. Michaels, Maryland, and modify the construction permit for Station WFBR accordingly. Upon further review of this proposal, it was determined that it could not be adopted consistent with Commission requirements involving a change of community of license. The *Memorandum Opinion and Order on Reconsideration* in MM Docket 88-526, 5 FCC Rcd 7094, 7097 (1990), states that we will not accept petitions to change the community of license before or during the first year of station operation, when a permittee or licensee received in a comparative hearing a

decisionally significant preference that would not have been granted had the comparative contest been for a station at the new proposed community. Recognizing the potential for subversion of the comparative process, the Commission placed the burden on petitioners to address this concern.⁴ As pointed out in the R&O, CWA was granted a construction permit for Channel 232A at Cambridge as a result of prevailing in a comparative hearing in which the Administrative Law Judge awarded it a "decisive 100% integration credit, enhanced by minority ownership, and past civic activities within the service area." See *Big Bay Broadcasting*, MM Docket 87-421, 4 FCC Rcd 4676, 4678 (1989). The R&O denied the change of community.

3. In the petition for reconsideration, CWA argues that the above referenced Commission policy set forth in the *Memorandum Opinion and Order on Reconsideration* in MM Docket 88-526 would not be violated by granting CWA's rulemaking petition because past civic activities in the service area were not decisionally significant in Docket 87-241. Rather, CWA contends that it and another applicant were both tied with 100% credit for integration of ownership and management and that CWA's qualitative enhancements for minority status and past broadcast experience were the decisional factors. CWA does recognize that it also received qualitative enhancements for past civic activities but alleges that only one of these was in the Cambridge area.

4. Prettyman filed a timely opposition to the reconsideration. Prettyman states that CWA raises the same arguments which were considered and rejected by the Commission's staff in the R&O. Prettyman points out that CWA now attempts to support changing the community of license by arguing that "community activity" was not "decisionally significant." Prettyman argues that CWA has failed to meet the Commission's standards for reconsideration; that there are no new facts or changed circumstances; and that petitioner simply cannot meet its burden of showing that the reallocation will not subvert the comparative process.

5. After careful consideration of the petition for reconsideration, we find that it should be denied.⁵ The R&O correctly denied CWA's request to reallocate Channel 232A from Cambridge to St. Michaels, Maryland, and to modify the construction permit for Station WFBR to specify the new community of license.⁶ As stated in the *Memorandum Opinion and Order on Reconsideration*, we will not accept petitions to change the community of license before or during the first year of station operation when a licensee or

¹ Public notice of the petition for reconsideration was given on July 28, 1994, Report No. 2024.

² CWA was granted a construction permit for Channel 232A on June 20, 1990 (BPH-851028MJ) and has filed a fourth extension request (BMPH-940509JZ).

³ Prettyman is the licensee of Station WICO-FM, Channel 232A, Cambridge, Maryland. Station WICO-FM was ordered to operate on Channel 248A in MM Docket 84-1043 to accommodate the allotment of Channel 232A at Cambridge. See 50 FR 34466, August 26, 1985. The construction permit for Station WFBR, Channel 232A, Cambridge, is conditioned on Station WICO-FM changing channels. On September 19, 1986, Prettyman Broadcasting was granted permission from the FCC to continue WICO-FM's operations on Channel 232A until a permittee at Cambridge initiated program tests. Prettyman Broadcasting is entitled to reimbursement for changing channels regardless of the outcome of this proceeding.

⁴ Petitioners who are permittees or licensees for less than one year were requested to state in their petitions whether they obtained a construction permit in a comparative hearing, and, if so, whether the petitioner sought the type of preference with which we are concerned. See para. 21 of the *MO&O on reconsideration* in MM Docket 88-526. We note that CWA failed to address this issue in its petition for rule making.

⁵ The dismissal of this proposal makes no determination on St. Michaels' needs for allotment of an FM channel nor does it preclude CWA from requesting a change of community once it has been on the air in Cambridge for a period of one year or more.

⁶ We note that although CWA has demonstrated that zoning difficulties render its presently desired site unavailable, it has not demonstrated that this is the only usable site for Channel 232A in Cambridge.

permittee receives in a comparative hearing a decisionally significant preference that would not have been granted had the comparative contest been for a station at the new proposed community. The record in the hearing proceeding concerning Channel 232A at Cambridge clearly indicates CWA was awarded the construction permit for Channel 232A at Cambridge in a comparative hearing where it received credit for past civic activities. Although it also received qualitative enhancements for minority ownership and past broadcast experience, the past civic activities at Cambridge were also part of this package of qualitative enhancements that were relied upon by the Administrative Law Judge. Therefore, we continue to believe that CWA falls squarely within the Commission's policy requiring denial of its change of community or license proposal.

6. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by CWA Broadcasting, Inc. IS DENIED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau